

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DATATRAK International, Inc.,

Plaintiff,

v.

Medidata Solutions, Inc.,

Defendant.

Case No. 1:11-cv-00458-PAG

Hon. Patricia A. Gaughan

**MEDIDATA’S EMERGENCY MOTION TO STAY LITIGATION
PENDING RESOLUTION OF ITS MOTION TO STAY LITIGATION
BASED ON *EX PARTE* REEXAMINATION OF THE PATENT-IN-SUIT**

Medidata seeks emergency relief in the form of a temporary stay until the Court rules on the more comprehensive Motion to Stay Litigation Pending *Ex Parte* Reexamination of the Patent-in-Suit (“Reexam Stay Motion”), which Medidata filed today. Emergency consideration of this motion is appropriate because, absent such immediate consideration, the parties will likely expend significant resources unnecessarily to meet case deadlines that currently fall during the period in which the parties will be briefing, and the Court will be considering and ruling upon, that Reexam Stay Motion. Medidata proposes that, if the Court denies its Reexam Stay Motion, (i) Medidata’s deadline to serve its invalidity and unenforceability contentions – currently due

November 3 – should be extended by seven days following such denial, and (ii) the subsequent case deadlines should be shifted accordingly.

If DATATRAK intends to oppose Medidata's Reexam Stay Motion, its submission is due on November 14, 2011. *See* Local Rule 7.1(d). Medidata's reply would be due on November 25, 2011. *See* Local Rule 7.1(e). Therefore, briefing would not be completed until after Thanksgiving. During that same period, the parties are to exchange the following submissions (putting aside any pending and future discovery requests, responses, and dispute-related submissions):

- **Nov. 3, 2011:** LPR 3.5 Invalidity and Unenforceability Contentions;
- **Nov. 11, 2011:** LPR 4.1(a) Preliminary ID of Claim Terms to be Construed; and
- **Nov. 21, 2011:** LPR 4.1(c) Final ID of Claim Terms.

See D.I. 29-1. Given subsequent deadlines, it is probable that the parties will be required to exchange further submissions during the period in which the Court is considering Medidata's Reexam Stay Motion:

- **Nov. 28, 2011:** LPR 3.7 Validity and Enforceability Contentions;
- **Dec. 6, 2011:** LPR 4.2(a) and (b) Preliminary Claim Constructions and Supporting Materials;
- **Dec. 21, 2011:** LPR 4.3(a) ID of Claim Construction Expert; and
- **Jan. 5, 2012:** LPR 4.3(b) Disclosure of Rebuttal Claim Construction Expert.

Id.

Based on Medidata's review and understanding of the standards applicable to its Reexam Stay Motion (as applied by this Court and other courts), and in view of the relevant facts here, a comprehensive stay pending completion of the reexamination proceeding is fully warranted in this case. If the Court agrees, and if the Patent Office cancels or modifies any of

the 52 claims asserted by DATATRAK, all seven of the items bulleted above will likely need to be redone. *See Progressive Cas. Ins. Co. v. Safeco Ins. Co.*, No. 1:10-CV-1370, 2010 WL 4699870, at *4 (N.D. Ohio Nov. 12, 2010); *Guthy-Renker Fitness LLC v. Icon Health & Fitness*, No. CV-97-7681, 1998 WL 670240, at *2–3 (C.D. Cal. July 15, 1998).

To avoid these potentially wasted resources, Medidata respectfully requests that the Court stay the entire case pending resolution of Medidata's *Ex Parte* Motion. If the Court denies Medidata's *Ex Parte* Motion, Medidata respectfully requests that its LPR 3.5 Invalidity and Unenforceability Contentions be due seven days after such order. The parties could thereafter confer upon and submit a joint (or dueling) revised litigation schedule(s).

DATED: October 28, 2011

By: /s/ David A. Schaefer
David A. Schaefer
das@mccarthylebit.com
McCARTHY, LEBIT, CRYSTAL &
LIFFMAN CO., LPA
101 West Prospect Avenue, Suite 1800
Cleveland, Ohio 44115
(216) 586-5479 (Telephone)
(216) 696-1210 (Facsimile)

Janine A. Carlan
carlan.janine@arentfox.com
Aziz Burgy
burgy.aziz@arentfox.com
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
(202) 857-6000 (Telephone)
(202) 857-6395 (Facsimile)

Attorneys for Defendant
Medidata Solutions, Inc.

CERTIFICATE OF COMPLIANCE WITH LR 7.1(f)

Pursuant to LR 7.1(f), this case is on a complex management track. I certify that *Medidata's Emergency Motion to Stay Litigation Pending Resolution of Its Motion to Stay Litigation based on Ex Parte Reexamination of the Patent-in-Suit* adheres to the page limitations set forth in LR 7.1(f).

/s/ David A. Schaefer

CERTIFICATE OF SERVICE

I certify that a copy of *Medidata's Emergency Motion to Stay Litigation Pending Resolution of Its Motion to Stay Litigation based on Ex Parte Reexamination of the Patent-in-Suit* was electronically filed on October 28, 2011. Notice of filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ David A. Schaefer